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Short Title: Rewrite Underground Damage Prevention Act.

(Public)

Sponsors:

Referred to:

April 1, 2013

A BILL TO BE ENTITLED

AN ACT REWRITING THE LAWS REGULATING UNDERGROUND UTILITY DAMAGE PREVENTION.

The General Assembly of North Carolina enacts:

SECTION 1. Article 8 of Chapter 87 of the General Statutes is repealed.

SECTION 2. Chapter 87 of the General Statutes is amended by adding the following new Article to read:

"Article 8A.

"Underground Utility Safety and Damage Prevention Act.

"§ 87-115. Short title.

This Article may be cited as the "Underground Utility Safety and Damage Prevention Act."

"§ 87-116. Declaration of policy and purpose.

The General Assembly of North Carolina hereby declares as a matter of public policy that it is necessary to protect the citizens and workforce of this State from the dangers inherent in excavating or demolishing in areas where underground lines, systems, or infrastructure are buried beneath the surface of the ground, and it is necessary to protect from costly damage underground facilities used for producing, storing, conveying, transmitting, or distributing communication, electricity, gas, petroleum, petroleum products, hazardous liquids, water, steam, or sewage. In order to carry out this public policy and to satisfy these compelling interests, the General Assembly has enacted the provisions of this Article providing for a systematic, orderly, and uniform process to identify existing facilities in advance of any excavation or demolition in this State and to implement safe digging practices.

"§ 87-117. Definitions.

The following definitions apply in this Article:

- (1) APWA. – The American Public Works Association or its successors.
- (2) Business continuation plan. – A plan that includes actions to be taken in an effort to provide uninterrupted service during catastrophic events.
- (3) Contract locator. – A person hired by an operator to identify and mark facilities.
- (4) Damage. – The substantial weakening of structural or lateral support of a facility; penetration or destruction of protective coating, housing, or other protective device of a facility; or the partial or complete severance of a facility.
- (5) Demolish or demolition. – Any operation by which a structure or mass of material is wrecked, razed, rendered, moved, or removed by any means, including the use of any tools, equipment, or discharge of explosives.

- 1 (6) Designer. – Any architect, engineer, or other person who prepares or issues a
2 drawing or blueprint for a construction or other project that requires
3 excavation or demolition work.
- 4 (7) Design notice. – A communication to the Notification Center in which a
5 request for identifying existing facilities for advance planning purposes is
6 made. A design notice may not be used for excavation purposes.
- 7 (8) Emergency. – An event involving a clear and imminent danger to life,
8 health, or property, the interruption of essential utility services, or the
9 blockage of transportation facilities, including highways, railways,
10 waterways, or airways that require immediate action.
- 11 (9) Excavate or excavation. – An operation for the purpose of the movement or
12 removal of earth, rock, or other materials in or on the ground by use of
13 manual or mechanized equipment or by discharge of explosives, including,
14 but not limited to, auguring, backfilling, boring, digging, ditching, drilling,
15 directional drilling, driving, grading, horizontal directional drilling, well
16 drilling, plowing-in, pounding, pulling-in, ripping, scraping, trenching, and
17 tunneling.
- 18 (10) Excavator. – A person engaged in excavation or demolition.
- 19 (11) Extraordinary circumstances. – Circumstances that make it impossible for
20 the operator to comply with the provisions of this Article, including
21 hurricanes, tornadoes, floods, ice, snow, and acts of God.
- 22 (12) Facility. – Any underground line, underground system, or underground
23 infrastructure used for producing, storing, conveying, transmitting,
24 identifying, locating, or distributing communication, electricity, gas,
25 petroleum, petroleum products, hazardous liquids, water, steam, or sewage.
26 Provided there is no encroachment on any operator's right-of-way, easement,
27 or permitted use, for the purposes of this Article, the following shall not be
28 considered an underground facility: (i) swimming pools and irrigation
29 systems; (ii) petroleum storage systems under Part 2A of Article 21A of
30 Chapter 143 of the General Statutes; (iii) septic tanks under Article 11 of
31 Chapter 130A of the General Statutes; and (iv) liquefied petroleum gas
32 systems under Article 5 of Chapter 119 of the General Statutes, unless the
33 system is subject to Title 49 C.F.R. § 192 or § 195.
- 34 (13) Locator. – An individual who identifies and marks facilities for operators
35 who has been trained and whose training has been documented.
- 36 (14) Mechanized equipment. – Equipment operated by means of mechanical
37 power, including, but not limited to, trenchers, bulldozers, power shovels,
38 augers, backhoes, scrapers, drills, horizontal directional drills, cable and pipe
39 plows, and other equipment used for plowing-in or pulling-in cable or pipe.
- 40 (15) Nonmechanized equipment. – Hand tools.
- 41 (16) Notice. – Oral, written, or electronic communication to the Notification
42 Center from any person planning to excavate or demolish in the State that
43 informs an operator of the person's intent to excavate or demolish.
- 44 (17) Notification Center. – A North Carolina member-owned not-for-profit
45 corporation sponsored by operators that will provide a system through which
46 a person can notify operators of proposed excavations and demolitions and
47 submit reports of alleged violations of this Article.
- 48 (18) Operator. – Any person, public utility, communications or cable service
49 provider, municipality, electrical utility, or electric or telephone cooperative
50 that owns or operates a facility in this State.

- 1 (19) Person. – Any individual, owner, corporation, partnership, association, or
2 any other entity organized under the laws of any state, any political
3 subdivision of a state, or any other instrumentality of a state, or any
4 authorized representative thereof.
- 5 (20) Positive response. – An automated information system that allows
6 excavators, locators, operators, and other interested parties to determine the
7 status of a locate request.
- 8 (21) Subaqueous. – A facility that is under a body of water, including rivers,
9 streams, lakes, waterways, swamps, and bogs.
- 10 (22) Tolerance zone. – If the diameter of the facility is known, the distance of
11 one-half of the known diameter plus 24 inches on either side of the
12 designated center line or, if the diameter of the facility is not marked, 24
13 inches on either side of the outside edge of the mark indicating a facility or,
14 for subaqueous facilities, a clearance of 15 feet on either side of the
15 indicated facility.
- 16 (23) Working day. – Every day, except Saturday, Sunday, or State legal holidays.

17 **"§ 87-118. Reserve to the State the power to regulate.**

18 The provisions in this Article supersede and preempt any ordinance adopted by a city or
19 county that purports to do any of the following:

- 20 (1) Require operators to obtain permits from a city or county in order to identify
21 facilities.
- 22 (2) Require premarking or marking of facilities.
- 23 (3) Specify the types of paint or other marking devices that are used to identify
24 facilities.
- 25 (4) Require removal of unexpired marks. The removal of expired marks shall be
26 the responsibility of the city or county.

27 **"§ 87-119. Costs associated with compliance; effect of permit.**

28 Any costs or expenses associated with an excavator's compliance with the requirements of
29 this Article shall not be charged to any operator. Any costs or expenses associated with an
30 operator's compliance with the requirements of this Article shall not be charged to any
31 excavator. The Notification Center may not impose any charge on any person giving notice to
32 the Notification Center. This section shall not affect costs related to the operation of the
33 Notification Center apportioned to an operator pursuant to G.S. 87-120(b). This section shall
34 not excuse an operator or excavator from liability for any damage or injury for which the
35 operator or excavator would be responsible under applicable law.

36 **"§ 87-120. Notification Center; responsibilities.**

37 (a) The operators in the State shall maintain a Notification Center for the sole purpose
38 of providing the services required by this Article. The Notification Center shall maintain
39 information concerning receipt of notification of proposed excavation and demolition activities
40 as provided in this Article and shall maintain information received from operators concerning
41 the location of the operators' facilities and the operators' positive responses to marking of the
42 facilities. The Notification Center shall also receive, maintain, and provide general
43 administration of reports of alleged violations of this Article and responses. The Notification
44 Center is not responsible in any way for identifying or marking facilities for operators. The
45 Notification Center is not responsible in any way for resolving reports of alleged violations of
46 this Article. All operators in the State shall join the Notification Center as provided in
47 subsection (b) of this section, and they shall use the services of the Notification Center to
48 perform the acts required by the provisions of this Article. There shall be only one Notification
49 Center for the State of North Carolina. The Notification Center is not an agency of the State or
50 any of the State's political subdivisions and is not subject to the provisions of Chapter 132 or
51 Chapter 133 of the General Statutes.

1 **(b)** Operators who are members of the Notification Center by whatever name that is in
2 existence on October 1, 2013, must remain members. Operators with more than 50,000
3 customers or 1,000 miles of facilities who are not members on October 1, 2013, must join no
4 later than October 1, 2014. Operators with more than 25,000 customers or 500 miles of
5 facilities who are not members on October 1, 2013, must join no later than October 1, 2015. All
6 operators that do not meet one of the criteria provided in this subsection must join no later than
7 October 1, 2016. Each engineering division of the Department of Transportation established
8 pursuant to G.S. 136-14.1 must join no later than October 1, 2016. The board of directors of the
9 Notification Center shall develop a reasonable method of apportioning the costs of operating
10 the Notification Center among the member operators. Prior to adopting a method of
11 determining such cost allocation, the board of directors shall publish the proposed method of
12 cost allocation to the member operators, and the proposed method of cost allocation shall be
13 approved by the member operators.

14 **(c)** The Notification Center shall have the following duties and responsibilities:

- 15 **(1)** Maintain a record of the notices received under subsection (d) of this section
16 for at least four years.
- 17 **(2)** Maintain a record of reports of alleged violations of this Article received
18 under subsection (e) of this section for at least four years, including
19 responses to such reports.
- 20 **(3)** Receive and transmit notices as provided in subsection (d) of this section.
- 21 **(4)** Develop and update, as needed, a business continuation plan.
- 22 **(5)** Notify those persons against whom reports of alleged violations of this
23 Article have been made and receive and maintain information submitted
24 from such persons in defense against the allegations.
- 25 **(6)** Provide a positive response system.
- 26 **(7)** Establish and operate a damage prevention training program for members of
27 the Notification Center. No person may recover damages in any manner or
28 form from the Notification Center arising out of or related to the manner in
29 which the Notification Center conducts a damage prevention training
30 program or receives, transmits, or otherwise administers a report of an
31 alleged violation of this Article.

32 **(d)** The Notification Center shall receive notice from any person intending to excavate
33 or demolish in the State and shall, at a minimum, transmit the following information to the
34 appropriate operator:

- 35 **(1)** The name, address, and telephone number of the person providing the notice
36 and, if different, the person responsible for the proposed excavation or
37 demolition.
- 38 **(2)** The starting date of the proposed excavation or demolition.
- 39 **(3)** The anticipated duration of the proposed excavation or demolition.
- 40 **(4)** The type of proposed excavation or demolition operation to be conducted.
- 41 **(5)** The location of the proposed excavation or demolition.
- 42 **(6)** Whether or not explosives are to be used in the proposed excavation or
43 demolition.

44 **(e)** The Notification Center shall receive reports of alleged violations of this Article.
45 The Notification Center shall contact persons against whom reports have been filed to inform
46 them of the alleged violation within 10 days of the filing of the report. The Notification Center
47 shall maintain the following information regarding reports of alleged violations:

- 48 **(1)** The name, address, and telephone number of the person making the report;
- 49 **(2)** The nature of the report, including the statute that is alleged to have been
50 violated;

- 1 (3) Information provided by the person making the report, including
2 correspondence, both written and electronic, pictures, and videos; and
3 (4) Information provided by the person against whom the report has been filed,
4 including correspondence, both written and electronic, pictures, and videos.

5 **§ 87-121. Facility operator responsibilities.**

6 (a) An operator shall provide to the excavator the following:

- 7 (1) The horizontal location and description of all of the operator's facilities in
8 the area where the proposed excavation or demolition is to occur. The
9 location shall be marked by stakes, soluble paint, flags, or any combination
10 thereof, as appropriate, depending upon the conditions in the area of the
11 proposed excavation or demolition. The operator shall, when marking as
12 provided under this subdivision, use the APWA Uniform Color Code. If the
13 diameter or width of the facility is greater than four inches, the dimension of
14 the facility shall be indicated at least every 25 feet in the area of the
15 proposed excavation or demolition. An operator who operates multiple
16 facilities in the area of the proposed excavation or demolition shall locate
17 each facility.
18 (2) Any other information that would assist the excavator in identifying and
19 thereby avoiding damage to the marked facilities.

20 (b) Unless otherwise provided in a written agreement between the operator and the
21 excavator, the operator shall provide to the excavator the information required by subsection (a)
22 of this section within the times provided below:

- 23 (1) For a facility, within three full working days after the day notice of the
24 proposed excavation or demolition was provided to the Notification Center.
25 (2) For a subaqueous facility, within 10 full working days after the day notice of
26 the proposed excavation or demolition was provided to the Notification
27 Center.
28 (3) If the operator declares an extraordinary circumstance, the times provided in
29 this subsection shall not apply.

30 (c) The operator shall provide a positive response to the Notification Center before the
31 expiration of the time provided in subsection (b) of this section. The response shall indicate
32 whether and to what extent the operator is able to provide the information required by
33 subsection (a) of this section to respond to the notice from the excavator.

34 (d) If the operator determines that provisions for marking subaqueous facilities are
35 required, the operator will provide a positive response to the Notification Center not more than
36 three full working days after notice has been provided by the excavator.

37 (e) If extraordinary circumstances prevent the operator from marking the location of the
38 facilities within the time specified in subsection (b) of this section, the operator shall either
39 notify the excavator directly or notify the excavator through the Notification Center. When
40 providing the notification under this subsection, the operator shall state the date and time when
41 the location will be marked.

42 (f) An operator shall prepare or cause to be prepared installation records of all facilities
43 installed on or after the date this Article becomes effective in a public street, alley, or
44 right-of-way dedicated to public use, excluding service drops and services lines. The operator
45 shall maintain these records in the operator's possession while the facility is in service.

46 (g) All facilities installed by or on behalf of operators on or after the date this Article
47 becomes effective shall be electronically locatable using a locating method that is generally
48 accepted by operators in the particular industry or trade in which the operator is engaged.

49 (h) A locator shall notify the operator if the locator becomes aware of an error or
50 omission in the records or documentation showing the location of the operator's facilities. The
51 operator must update its records to correct any error or omission.

1 (i) An operator may reject an excavation or demolition notice due to homeland security
2 considerations based upon federal statutes or federal regulations until the operator can confirm
3 the legitimacy of the notice. The operator shall notify the person making the notice of the
4 denial and may request additional information through the positive response system.

5 (j) Gravity fed sanitary sewers installed prior to the date this Article becomes effective
6 and all storm water facilities shall be exempt from the location requirements provided in
7 subsection (a) of this section. Neither the excavator nor the person financially responsible for
8 the excavation will be liable for any damage to an unmarked gravity fed sanitary sewer line or
9 unmarked storm water facility if the person doing the excavation exercises due care to protect
10 existing facilities when there is evidence of the existence of those facilities near the proposed
11 excavation area.

12 (k) An operator who does not become a member of the Notification Center as required
13 by G.S. 87-120(b) may not recover for damages to a facility caused by an excavator who has
14 complied with the provisions of this Article and has exercised reasonable care in the
15 performance of the excavation or demolition.

16 **"§ 87-122. Excavator responsibilities.**

17 (a) Before commencing any excavation or demolition operation, the person responsible
18 for the excavation or demolition shall provide or cause to be provided notice to the Notification
19 Center of his or her intent to excavate or demolish. Notice for any excavation or demolition that
20 does not involve a subaqueous facility must be given within three to 12 full working days
21 before the proposed commencement date of the excavation or demolition. Notice for any
22 excavation or demolition in the vicinity of a subaqueous facility must be given within 10 to 20
23 full working days before the proposed commencement date of the excavation or demolition.
24 Notice given pursuant to this subsection shall expire 15 full working days after the date notice
25 was given. No excavation or demolition may continue after this 15-day period unless the
26 person responsible for the excavation or demolition provides a subsequent notice which shall
27 be provided in the same manner as the original notice required by this subsection. When
28 demolition of a building is proposed, the operator shall be given a reasonable time in which to
29 remove or protect the operator's facilities before the demolition commences.

30 (b) The notice required by subsection (a) of this section shall, at a minimum, contain all
31 of the following:

- 32 (1) The name, address, and telephone number of the person providing the notice.
- 33 (2) The anticipated starting date of the proposed excavation or demolition.
- 34 (3) The anticipated duration of the proposed excavation or demolition.
- 35 (4) The type of proposed excavation or demolition operation to be conducted.
- 36 (5) The location of the proposed excavation or demolition, not to exceed
37 one-quarter mile in geographical length, or five adjoining addresses, not to
38 exceed one-quarter mile in geographical length.
- 39 (6) Whether or not explosives are to be used in the proposed excavation or
40 demolition.

41 (c) An excavator shall comply with the following:

- 42 (1) When the excavation area cannot be clearly and adequately identified within
43 the area described in the notice, the excavator shall designate the route,
44 specific area to be excavated, or both by premarking the area before the
45 operator performs a locate. Premarking shall be made with soluble white
46 paint, white flags, or white stakes.
- 47 (2) Confirm through the Notification Center's positive response system prior to
48 excavation or demolition that all operators have responded and that all
49 facilities that may be affected by the proposed excavation or demolition have
50 been marked.

- 1 (3) Plan the excavation or demolition to avoid damage to or minimize
2 interference with facilities in or near the construction area.
- 3 (4) Begin excavation or demolition prior to the specified waiting period only if
4 the excavator has confirmed that all operators have responded with an
5 appropriate positive response.
- 6 (5) If the operator declares extraordinary circumstances, the excavator shall not
7 excavate or demolish until after the time and date that the operator has
8 provided in the operator's response.
- 9 (6) If an operator fails to respond to the positive response system, the excavator
10 may proceed if there are no visible indications of a facility at the proposed
11 excavation or demolition area, such as a pole, marker, pedestal, meter, or
12 valve. However, if the excavator is aware of or observes indications of an
13 unmarked facility at the proposed excavation or demolition area, the
14 excavator shall not begin excavation or demolition until an additional call is
15 made to the Notification Center detailing the facility and an arrangement is
16 made for the facility to be marked by the operator within three hours from
17 the time the additional call is received by the Notification Center.
- 18 (7) Beginning on the date provided in the excavator's notice to the Notification
19 Center, the excavator shall preserve the staking, marking, or other
20 designation until they are no longer required. When a mark is no longer
21 visible or is destroyed, but the excavation or demolition continues in the
22 vicinity of the facility, the excavator shall request a re-mark from the
23 Notification Center to ensure the protection of the facility.
- 24 (8) When demolition of a building is proposed, the excavator shall give the
25 operator a reasonable time in which to remove or protect the operator's
26 facilities before demolition commences.
- 27 (9) An excavator shall not perform any excavation or demolition within the
28 tolerance zone unless the excavator complies with all of the following
29 conditions:
- 30 a. The excavator shall not use mechanized equipment, except
31 noninvasive equipment specifically designed or intended to protect
32 the integrity of the facility, within the marked tolerance zone of an
33 existing facility until:
- 34 1. The excavator has visually identified the precise location of
35 the facility or has visually confirmed that no facility is present
36 up to the depth of excavation;
- 37 2. The excavator has taken reasonable precautions to avoid any
38 substantial weakening of the facility's structural or lateral
39 support, or both, or penetration or destruction of the facilities
40 or their protective coatings; and
- 41 3. The excavator may use mechanical means, as necessary, for
42 the initial penetration and removal of pavement or other
43 materials requiring use of mechanical means of excavation
44 but only to the depth of the pavement or other materials. For
45 parallel type excavations within the tolerance zone, the
46 existing facility shall be visually identified at intervals not to
47 exceed 50 feet along the line of excavation to avoid damages.
48 The excavator shall exercise due care at all times to protect
49 the facilities when exposing these facilities.
- 50 b. The excavator shall maintain clearance between a facility and the
51 cutting edge or point of any mechanized equipment, taking into

1 account the known limit of control of the cutting edge or point, as
2 may be reasonably necessary to avoid damage to the facility.

3 c. The excavator shall provide support for facilities in and near the
4 excavation or demolition area, including backfill operations, as may
5 be reasonably required by the operator for the protection of the
6 facilities.

7 (10) The excavator shall not use mechanized equipment within 24 inches of a
8 facility that is a gas, oil, petroleum, or electric transmission line unless the
9 facility operator has consented to the use in writing and the operator's
10 representative is on site during the use of the mechanized equipment. For
11 purposes of this subdivision, the term "gas, oil, petroleum transmission line"
12 has the same meaning as the term "transmission line" in Title 49 C.F.R.
13 § 192.3, and the term "electric transmission line" has the same meaning as
14 the term "transmission line" in G.S. 62-100(7).

15 **"§ 87-122.1. Training.**

16 (a) Every person who is an excavator, locator, or operator under this Article by virtue of
17 engaging in these activities in the course of a business or trade has a duty to provide education
18 and training to employees and to document such education and training. The training shall
19 include sufficient information, guidance, and supervision such that employees can competently
20 and safely operate the equipment used in the course of the business or trade and complete
21 assigned tasks in a competent and safe manner while minimizing the potential for damage.

22 (b) When an excavator, locator, or operator under this Article retains an independent
23 contractor to perform activities regulated by this Article, the duty set forth in subsection (a) of
24 this section shall not apply to the excavator, locator, or operator. Independent contractors shall
25 provide training to their employees in accordance with this section.

26 (c) Excavation shall be conducted in accordance with OSHA Standard 1926 and under
27 the direction of a competent person, as defined therein.

28 (d) Locators shall be properly trained. Locator training shall be documented.

29 **"§ 87-123. Exemptions.**

30 The notice requirements in G.S. 87-122(a) and G.S. 87-122(b) do not apply to the
31 following:

32 (1) An excavation or demolition performed by the owner of a single-family
33 residential property on his or her own land that meets all of the following
34 requirements:

35 a. Does not encroach on any operator's right-of-way, easement, or
36 permitted use.

37 b. Is performed with nonmechanized equipment.

38 c. Is less than 10 inches in depth.

39 (2) An excavation or demolition that involves the tilling of soil for agricultural
40 purposes.

41 (3) An excavation with nonmechanized equipment by an operator or surveyor
42 for the following purposes:

43 a. Locating for a valid notification request or for the minor repair,
44 connection, or routine maintenance of an existing facility or survey
45 pin.

46 b. Probing underground to determine the extent of gas or water
47 migration.

48 (4) When the Department of Transportation, a local government, special
49 purpose district, or public service district is conducting maintenance
50 activities within its designated right-of-way. Maintenance activities shall
51 include resurfacing, milling, emergency replacement of signs critical for

1 maintaining safety, or the reshaping of shoulders and ditches to the original
2 road profile. Maintenance activities do not include the initial installation of
3 traffic signs, traffic control equipment, or guardrails.

4 (5) An excavation or demolition performed by a railroad entirely on land which
5 the railroad owns or operates or, in the event of an emergency, on adjacent
6 land. No provision of this Article shall apply to any railroad which owns,
7 operates, or permits facilities under land which the railroad owns or
8 operates.

9 (6) An excavation or demolition performed by a farmer on his or her own
10 property that does not encroach on any operator's right-of-way, easement, or
11 permitted use.

12 **"§ 87-124. Notice in case of emergency excavation or demolition.**

13 (a) An excavator performing an emergency excavation or demolition is not required to
14 give notice to the Notification Center as provided in G.S. 87-122. However, the excavator shall,
15 as soon as practicable, give oral notice to the Notification Center which shall include a
16 description of the circumstances justifying the emergency. The excavator may request
17 emergency assistance from each affected operator in locating and providing immediate
18 protection to the facilities in the affected area.

19 (b) The declaration of an emergency excavation or demolition shall not relieve any
20 party of liability for causing damage to an operator's facilities even if those facilities are
21 unmarked.

22 (c) Any person who falsely claims that an emergency exists requiring an excavation or
23 demolition shall be guilty of a Class 3 misdemeanor.

24 **"§ 87-125. Notification required when damage is done.**

25 (a) The excavator performing an excavation or demolition that results in any damage to
26 a facility shall immediately upon discovery of the damage notify the Notification Center and
27 the facility operator, if known, of the location and nature of the damage. The excavator shall
28 allow the operator reasonable time to accomplish necessary repairs before completing the
29 excavation or demolition in the immediate area of the facility. The excavator shall delay any
30 backfilling in the immediate area of the damaged facility until authorized by the operator. The
31 operator or qualified personnel authorized by the operator shall repair any damage to the
32 facility.

33 (b) An excavator who is responsible for an excavation or demolition where any damage
34 to a facility results in the discharge of electricity or escape of any flammable, toxic, or
35 corrosive gas or liquid, or that endangers life, health, or property shall immediately notify
36 emergency responders, including 911 services, the Notification Center, and the facility
37 operator. The excavator shall take reasonable measures to protect himself or herself, other
38 persons in immediate danger, members of the general public, property, and the environment
39 until the operator or emergency responders arrive and complete an assessment of the situation.

40 **"§ 87-126. Design notices.**

41 (a) A designer may submit a design notice to the Notification Center. The design notice
42 shall describe the tract or parcel of land for which the design notice has been submitted with
43 sufficient particularity, as defined by policies and procedures adopted by the Notification
44 Center, to allow the operator to ascertain the precise tract or parcel of land involved.

45 (b) Within 10 working days, not including the day the notice was given, after a design
46 notice for a proposed project has been submitted to the Notification Center, the operator shall
47 respond in one of the following manners:

48 (1) By designating the location of all facilities owned by the operator within the
49 area of the proposed excavation as provided in G.S. 87-121(a).

50 (2) By providing to the person submitting the design notice the best available
51 description of all facilities in the area designated by the design notice, which

1 may include drawings marked with a scale, dimensions, and reference points
2 for underground utilities already built in the area or other facility records that
3 are maintained by the operator.

4 (3) Allowing the person submitting the design notice or any other authorized
5 person to inspect the drawings or other records for all facilities within the
6 proposed area of excavation at a location that is acceptable to the operator.

7 (c) An operator may reject a design notice based upon homeland security
8 considerations pending the operator obtaining additional information confirming the legitimacy
9 of the notice. The operator shall notify the person making the request through a design notice of
10 the denial and may request additional information through the positive response system.

11 **"§ 87-127. Absence of facility location.**

12 If an operator who has been given notice as provided in G.S. 87-120(d) by the Notification
13 Center fails to respond to that notice as provided in G.S. 87-121 or fails to properly locate the
14 facility, the person excavating is free to proceed with the excavation. Neither the excavator nor
15 the person financially responsible for the excavation will be liable to the nonresponding or
16 improperly responding operator for damages to the operator's facilities if the person doing the
17 excavating exercises due care to protect existing facilities when there is evidence of the
18 existence of those facilities near the proposed excavation area.

19 **"§ 87-128. Underground Damage Prevention Review Board; enforcement; civil penalties.**

20 (a) The Notification Center shall establish an Underground Damage Prevention Review
21 Board to review reports of alleged violations of this Article. The members of the Board shall be
22 appointed by the Governor. The Board shall consist of the following members:

23 (1) A representative from the North Carolina Department of Transportation;

24 (2) A representative from a facility contract locator;

25 (3) A representative from the Notification Center;

26 (4) A representative from an electric public utility;

27 (5) A representative from the telecommunications industry;

28 (6) A representative from a natural gas utility;

29 (7) A representative from a hazardous liquid transmission pipeline company;

30 (8) A representative recommended by the League of Municipalities;

31 (9) A highway contractor licensed under G.S. 87-10(b)(2) who does not own or
32 operate facilities;

33 (10) A public utilities contractor licensed under G.S. 87-10(b)(3) who does not
34 own or operate facilities;

35 (11) A surveyor licensed under Chapter 89C of the General Statutes;

36 (12) A representative from a rural water system;

37 (13) A representative from an investor-owned water system;

38 (14) A representative from an electric membership corporation; and

39 (15) A representative from a cable company.

40 (b) The Notification Center shall transmit all reports of alleged violations of this Article
41 to the Board, including any information received by the Notification Center regarding the
42 report. The Board shall meet at least quarterly to review all reports filed pursuant to
43 G.S. 87-120(e). The Board shall act as an arbitrator between the parties to the report. If, after
44 reviewing the report and any accompanying information, the Board determines that a violation
45 of this Article has occurred, the Board shall notify the violating party in writing of its
46 determination and the recommended penalty. The violating party may request a hearing before
47 the Board, after which the Board may reverse or uphold its original finding. If the Board
48 recommends a penalty, the Board shall notify the Utilities Commission of the recommended
49 penalty, and the Utilities Commission shall issue an order imposing the penalty.

50 (c) A party determined by the Board under subsection (b) of this section to have
51 violated this Article may initiate an arbitration proceeding before the Utilities Commission. If

1 the violating party elects to initiate an arbitration proceeding, the violating party shall pay a
2 filing fee of two hundred fifty dollars (\$250.00) to the Utilities Commission, and the Utilities
3 Commission shall open a docket regarding the report. The Utilities Commission shall direct the
4 parties enter into an arbitration process. The parties shall be responsible for selecting and
5 contracting with the arbitrator. Upon completion of the arbitration process, the Utilities
6 Commission shall issue an order encompassing the outcome of the binding arbitration process,
7 including a determination of fault, a penalty, and assessing the costs of arbitration to the
8 non-prevailing party. Any party may appeal an order issued by the Utilities Commission
9 pursuant to this section to the superior court division of the General Court of Justice in the
10 county where the alleged violation of this Article occurred or in Wake County, for trial de
11 novo. The authority granted to the Utilities Commission within this section is limited to this
12 section and does not grant the Utilities Commission any authority that they are not otherwise
13 granted under Chapter 62 of the General Statutes.

14 (d) Any person who violates any provision of this Article shall be subject to a penalty
15 as set forth in this subsection. The provisions of this Article do not affect any civil remedies for
16 personal injury or property damage otherwise available to any person, except as otherwise
17 specifically provided for in this Article. The penalty provisions of this Article are cumulative to
18 and not in conflict with provisions of law with respect to civil remedies for personal injury or
19 property damage. The clear proceeds of any civil penalty assessed under this section shall be
20 used as provided in Section 7(a) of Article IX of the North Carolina Constitution. The penalties
21 for a violation of this Article shall be as follows:

22 (1) If the violation was the result of an accident, the penalty shall be a
23 requirement of training, a requirement of education, or both.

24 (2) If the violation was the result of ordinary negligence, the penalty shall be a
25 civil penalty of one thousand dollars (\$1,000), a requirement of training, a
26 requirement of education, or a combination of the three.

27 (3) If the violation was the result of gross negligence or willful or wanton
28 conduct, the penalty shall be a civil penalty of two thousand five hundred
29 dollars (\$2,500), a requirement of training, and a requirement of education.

30 **"§ 87-129. Severability.**

31 If any provision of this Article or the application thereof to any person or circumstance is
32 held invalid, such invalidity shall not affect other provisions or applications, and to this end the
33 provisions of this Article are severable."

34 **SECTION 3.** This act becomes effective October 1, 2014, and applies to all
35 activities regulated by the provisions of Article 8A of Chapter 87 of the General Statutes, as
36 enacted by this act, that occur on or after that date.